

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STEPHANIE GARRETT HAMPTON, *et al.*

Plaintiffs,

v.

NECEDAH AREA SCHOOL DISTRICT,

Defendant.

ORDER

22-cv-627-jdp

On November 2, 2022, plaintiffs filed their civil rights complaint against defendant Necedah Area School District (NASD), alleging in the main that NASD violated their rights under the Due Process Clause by failing to enforce a restraining order issued against Brenda Hoernke. *See* dkts. 1 and 8. Pending before the court are NASD's motion for judgment on the pleadings (dkt. 11), motion for sanctions (dkt. 13) and motion to compel discovery (dkt. 28). In this order, the court is granting the motion compel discovery and shifting costs pursuant to F. R. Civ. Pro. Rule 37(a)(5).

This is NASD's second motion to compel. The first, filed on April 7, 2023 (dkt. 17), reported that plaintiffs had failed to provided their initial disclosures despite repeated promises to do so. Plaintiffs responded to the motion by providing their initial disclosures, *see* dkt. 21, which mooted the motion, but still allowed NASD to seek cost-shifting. *See* June 14, 2023 text-only order, dkt. 27. NASD did not seek cost shifting, but it promptly filed a second motion to compel, dkt. 28, reporting myriad discovery failures by plaintiffs, including broken promises as to when and how the discovery would be provided. *See* Motion To Compel, dkt. 28, and June 19, 2023 Declaration of Lori M. Lubinsky, dkt. 29 & dkts. 29-1 0-29-6. Plaintiffs did not respond to this motion in any fashion. While NASD's motion was pending, its attorney

continued to seek this discovery from plaintiffs, to no avail. *See* September 13, 2023 Lubinsky letter, dkt. 30, and attached email string, dkt. 30-1.

Having reviewed NASD's unopposed motion, the supporting documents, and the email string, the court concludes that NASD is entitled to the discovery it is seeking as relevant to this lawsuit and proportionate to the needs of this case. Plaintiffs, by failing to respond, have offered no reason for the court to conclude otherwise. Plaintiffs may have two weeks to provide the requested discovery. In light of plaintiffs' repeated flouting of their discovery obligations, their failure to comply with this order likely will result in sanctions under Rule 37(b), which could include dismissal of this lawsuit. Apart from this, NASD is entitled to cost-shifting under Rule 37(a)(5).

ORDER

It is ORDERED that:

- (1) Defendant NASD's motion to compel discovery, dkt. 28, is GRANTED in its entirety. Not later than **September 29, 2023**, plaintiffs shall provide all of the discovery requested by defendants.
- (2) Pursuant to Rule 37(a)(5)(B), plaintiffs shall pay NASD's reasonable expenses incurred in making the motion. Not later than **September 22, 2023**, NASD may submit its itemized bill of costs. Not later than **September 29, 2023**, plaintiffs may respond to the reasonableness of NASD's request.

Entered this 15th Day of September, 2023.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge